

Exhibit 19

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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF OHIO
4 EASTERN DIVISION

5 -----X

IN RE: NATIONAL PRESCRIPTION MDL No. 2804
6 OPIATE LITIGATION,

Case No. 17-MD-2804

7 This document relates to:

8 All Cases Hon. Dan A. Polster

9 -----X

10 * HIGHLY CONFIDENTIAL *

11 * SUBJECT TO FURTHER CONFIDENTIALITY REVIEW *

12 VIDEOTAPED DEPOSITION

13 OF

14 LACEY R. KELLER

15 New York, New York

16 Thursday, June 13, 2019

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Reported by:

24 ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

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2 So as I understand your opinions,

3 they are opinions from a data science point

4 of view that say if you ran these metrics,

5 here's what the results would look like.

6 Is that a fair assessment at a

7 very, very high level?

8 MS. CONROY: Objection.

9 You can answer.

10 A. I would say that's a fair

11 assessment. I was asked to apply the

12 compliance metrics to the labeler's data,

13 including chargebacks and IMS, IQ, yeah.

14 Q. And you don't intend to offer any

15 opinions about which one of those metrics

16 is the right one, do you?

17 A. That is correct. I don't endorse

18 any of the metrics or not endorse.

19 Agnostic would be the correct term, yeah.

20 Q. Okay. And you're not going to

21 offer any opinions that a particular

22 registrant should have or is required to

23 employ which ones of the metrics? That is

24 not what you were retained to do, correct?

25 A. That is correct.

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2 Q. And that is beyond your expertise

3 to do.

4 Do you agree with that?

5 A. That is correct.

6 Q. And I think, if I'm reading your

7 report correctly, you don't take any

8 opinion as to what the DEA or the

9 Controlled Substances Act means when it

10 talks about suspicious orders.

11 You are not taking a position as

12 to what specifically the DEA means, right?

13 A. Yes, I believe that's right.

14 Q. And I think it can make our day

15 easier if I understand the scope of this.

16 What you have done is you've used

17 a number of different metrics to show that

18 if a particular defendant had looked at the

19 data this way, this is what that defendant

20 would have seen.

21 Is that fair?

22 A. Yes.

23 Q. And when you use the term

24 "suspicious," which you do quite a number

25 of times in your report, what you mean by

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2 that is the result of your own metrics,

3 right?

4 A. Yes, you can characterize it that

5 way.

6 Q. You don't mean to use

7 "suspicious" as a technical term meaning

8 suspicious under the Controlled Substances

9 Act, right?

10 MR. LEDLIE: Object to the form.

11 You can answer.

12 A. Yes, when I say "suspicious," I

13 mean that they have either triggered one of

14 the metrics, which are -- I'll leave it at

15 that.

16 Q. Okay. And you haven't, you

17 haven't gone -- have you ever met with

18 anyone from DEA about this case and your

19 report?

20 A. I have not met with anyone about

21 this case or my report from the DEA.

22 Q. Okay. Why do you hesitate?

23 A. I have spoken to DEA officials

24 about the ARCOS data and how to process it,

25 but clarifying questions of what does an S

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2 mean and what does this correction number

3 mean like...

4 Q. Okay. When you have spoken to

5 the DEA, it has been entirely in the

6 context of the data itself, correct?

7 A. Absolutely.

8 Q. You've never asked anyone from

9 DEA, "Do these various metrics make sense

10 to you"? You've never asked that question?

11 A. Never.

12 Q. And you've never asked anybody

13 from DEA, "Are these metrics in line with

14 what DEA expects or requires"? That's

15 nothing you've ever asked the DEA, correct?

16 A. That is correct.

17 Q. And that wasn't -- the point of

18 your report is not to say what the DEA

19 requires, but rather to say what the data

20 had available for people to look at.

21 Is that a proper simplification?

22 MS. CONROY: Objection.

23 You can answer.

24 A. I would say, yes, it was what

25 data was available to apply the -- what

<p style="text-align: right;">Page 86</p> <p>1</p> <p>2 them separately, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. And the reason you didn't is</p> <p>5 because you were asked to assume these</p> <p>6 groupings and to present the data this way;</p> <p>7 is that right?</p> <p>8 MS. CONROY: Objection.</p> <p>9 A. Yes or from our own</p> <p>10 understanding. Yes.</p> <p>11 Q. Well, that's what I want to know.</p> <p>12 Which one was it?</p> <p>13 With Allergan specifically,</p> <p>14 because that's my client, were you asked to</p> <p>15 group it with Teva or did you independently</p> <p>16 decide to do it that way?</p> <p>17 A. I would say it would be most</p> <p>18 correct to say that we had grouped them</p> <p>19 from doing this for a long time and that it</p> <p>20 was agreed upon that that was okay.</p> <p>21 Q. Okay.</p> <p>22 A. So the data doesn't come that</p> <p>23 way. I have to process it and do the</p> <p>24 groupings. We presented the groupings. We</p> <p>25 continued with those groupings as agreed</p>	<p style="text-align: right;">Page 88</p> <p>1</p> <p>2 didn't -- you were not asked to and you</p> <p>3 didn't look specifically at Allergan?</p> <p>4 MS. CONROY: Objection.</p> <p>5 A. As far as we were presenting</p> <p>6 results, let's say, ala, table 1 and 2,</p> <p>7 correct.</p> <p>8 Q. Now beginning on page 16 in</p> <p>9 Section J, you describe your compliance</p> <p>10 metric application.</p> <p>11 Are you with me?</p> <p>12 A. Yes.</p> <p>13 Q. And you state in paragraph 51, "I</p> <p>14 was instructed by counsel to apply metrics</p> <p>15 derived and used by any manufacturer or</p> <p>16 distributor and also to apply metrics</p> <p>17 applied in enforcement actions, McKesson</p> <p>18 and Masters, to all data sets to detect</p> <p>19 prescribing and purchasing patterns of</p> <p>20 unusual size, frequency and pattern."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. When you say "I was instructed by</p> <p>24 counsel," who does that refer to? What</p> <p>25 counsel?</p>
<p style="text-align: right;">Page 87</p> <p>1</p> <p>2 upon.</p> <p>3 Does that help?</p> <p>4 Q. And so when you talk in table 7,</p> <p>5 for example, about Allergan and you do</p> <p>6 break it out for table 7, what is the</p> <p>7 difference there in Allergan and Teva?</p> <p>8 What Allergan products?</p> <p>9 A. I'm sorry, table 7?</p> <p>10 Q. I'm sorry, my fault. Let me</p> <p>11 reask the question.</p> <p>12 Table 6. I keep saying 7, but</p> <p>13 it's table 6.</p> <p>14 In table 6 on page 28, what I</p> <p>15 really would like to understand is what you</p> <p>16 understand the difference between Allergan</p> <p>17 and Teva in that table?</p> <p>18 A. So for that table, I think there</p> <p>19 were -- the purpose of this table is to</p> <p>20 show compliance metrics over time, and so</p> <p>21 there were differences over time.</p> <p>22 And so to the extent that we</p> <p>23 could help show that granularity, that was</p> <p>24 the purpose of breaking them apart.</p> <p>25 Q. But you didn't ask -- you</p>	<p style="text-align: right;">Page 89</p> <p>1</p> <p>2 A. That would refer to Linda Singer.</p> <p>3 Q. And so when we talk about</p> <p>4 counsel, it's Linda Singer who asked you to</p> <p>5 do these various metrics that we are going</p> <p>6 to talk about in a minute?</p> <p>7 A. Linda Singer provided us with the</p> <p>8 assignment, yes.</p> <p>9 Q. In No. 1 -- well, this term that</p> <p>10 is used in the end of paragraph 51,</p> <p>11 "patterns of unusual size, frequency and</p> <p>12 pattern" and there is a cite there, what is</p> <p>13 that cite? Do you know?</p> <p>14 A. I understand that to be the Code</p> <p>15 of Federal Regulations when it comes to</p> <p>16 diversion, but I'd have to have the actual</p> <p>17 language in front of me to know.</p> <p>18 Q. I don't mean to give you a memory</p> <p>19 quiz on the cites. That is not the purpose</p> <p>20 of the question.</p> <p>21 There are no specific</p> <p>22 requirements for how a registrant is</p> <p>23 supposed to calculate patterns of unusual</p> <p>24 size, frequency, and purchasing patterns of</p> <p>25 a -- sorry, let me ask the question again.</p>

<p style="text-align: right;">Page 90</p> <p>1</p> <p>2 You are not aware of any specific</p> <p>3 rules or regulations for a registrant on</p> <p>4 how to calculate patterns of unusual size</p> <p>5 or frequency, correct?</p> <p>6 A. So I think, as I stated earlier,</p> <p>7 that's not my area of expertise.</p> <p>8 Q. And you're not aware of any?</p> <p>9 A. I wouldn't be able to say, but...</p> <p>10 Q. Okay. The first metric that you</p> <p>11 employ is double the national average. And</p> <p>12 I'm looking now on page 17.</p> <p>13 A. Correct.</p> <p>14 Q. Are you with me?</p> <p>15 And that metric, again, was one</p> <p>16 that Linda Singer asked you to do, correct?</p> <p>17 A. Correct.</p> <p>18 Q. And you didn't find it in any DEA</p> <p>19 regulations?</p> <p>20 A. Correct.</p> <p>21 Q. You are not aware of any place in</p> <p>22 the real world where this metric is used,</p> <p>23 correct?</p> <p>24 MS. CONROY: Objection.</p> <p>25 A. I wouldn't know for sure.</p>	<p style="text-align: right;">Page 92</p> <p>1</p> <p>2 Q. You do not know of any place in</p> <p>3 the real world that applies that average,</p> <p>4 correct?</p> <p>5 MS. CONROY: Objection.</p> <p>6 A. I wouldn't know.</p> <p>7 Q. And it is not your opinion that</p> <p>8 any registrant should have or had any</p> <p>9 requirement to employ that metric in the</p> <p>10 real world? That is not the opinion you're</p> <p>11 offering in this case, correct?</p> <p>12 A. Correct, that's not my area of</p> <p>13 expertise.</p> <p>14 Q. Looking at No. 3, the McKesson</p> <p>15 8,000 rule, again -- I apologize if this is</p> <p>16 getting tedious. The McKesson 8,000 rule</p> <p>17 is a metric that you are asked to apply by</p> <p>18 Linda Singer, correct?</p> <p>19 A. Correct.</p> <p>20 Q. And you were asked to look at</p> <p>21 what would the data show if you used this</p> <p>22 set of assumptions, right?</p> <p>23 MS. CONROY: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. Like No. 1 and 2, the McKesson</p>
<p style="text-align: right;">Page 91</p> <p>1</p> <p>2 Q. Do you have a guess?</p> <p>3 MS. CONROY: Objection.</p> <p>4 A. No.</p> <p>5 Q. Okay. And you are -- I think you</p> <p>6 already answered this earlier, but you are</p> <p>7 not offering any opinion that this metric</p> <p>8 is somehow a requirement on registrants,</p> <p>9 right? That is not your opinion?</p> <p>10 A. Correct. That's not my area of</p> <p>11 expertise.</p> <p>12 Q. And you are not offering an</p> <p>13 opinion that failure to employ this metric</p> <p>14 is somehow unlawful or misconduct?</p> <p>15 That is beyond your expertise,</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. Going to the second metric that</p> <p>19 you applied, triple national average,</p> <p>20 again, that metric you were asked to run by</p> <p>21 Linda Singer, correct?</p> <p>22 A. Correct.</p> <p>23 Q. That did not come from any DEA</p> <p>24 guidance or any DEA regulations, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 93</p> <p>1</p> <p>2 8,000 rule is not a metric that you have</p> <p>3 ever seen in any DEA guidance or</p> <p>4 regulation, correct?</p> <p>5 A. I think that's correct.</p> <p>6 Q. Are you aware of any limitation</p> <p>7 anywhere in the DEA regulations or in the</p> <p>8 Controlled Substances Act or any guidance</p> <p>9 interpreting them that puts a specific</p> <p>10 limitation on dosage units?</p> <p>11 MS. CONROY: Objection.</p> <p>12 A. I would say that's outside of my</p> <p>13 expertise.</p> <p>14 Q. And it is not your opinion in</p> <p>15 this case that any particular defendant was</p> <p>16 required or obligated to employ this metric</p> <p>17 in running its business, correct?</p> <p>18 A. That's correct. That's outside</p> <p>19 of my expertise.</p> <p>20 Q. Even with respect to McKesson, it</p> <p>21 is outside your area of expertise to say</p> <p>22 that anybody, McKesson or anybody else, had</p> <p>23 a duty to run a metric in the way that you</p> <p>24 have, right?</p> <p>25 A. Yes, I believe that is correct.</p>

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Q. Going down to No. 4, Maximum Monthly Trailing Six-Month Threshold, which in parentheses says, quote, "common sense."

I think you told me this before the break, common sense is not a term that you came up with, right?

A. Correct. I've heard this rule referred to colloquially as the common sense rule.

Q. Who have you heard that colloquially? Who has referred to this rule as the common sense rule?

A. I honestly couldn't remember. It's been -- I've heard it so many times that I --

Q. Had you heard it from lawyers in the case?

A. Sure.

Q. Have you ever heard it from DEA?

A. No. Like I said, I only spoke to the DEA about the ARCOS data.

Q. Okay. And it is not your opinion in this case that this metric is the most sensible metric? Even though the term

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might suggest that, that's actually not your opinion in this case. Am I right about that?

A. That's correct.

Q. Okay. Have you read the Masters Pharmaceutical opinion from the D.C. circuit in 2017?

A. I think I skimmed it a while ago.

Q. You don't intend to offer any opinions about what the law is as a result of that opinion, correct?

A. That's correct.

Q. And you don't intend to offer any opinions as to what the law might require as a result of that opinion, do you?

A. That's correct.

Q. Okay. Sorry, back to the common sense threshold. That is not a threshold that came from -- where did that threshold come from?

A. Do you mean where was the metric derived or?

Q. Yes. Where was metric derived?

A. So I have it -- whatever citation

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I have there, that's where it would have been derived from.

Q. And beyond that, you don't know anything other than you were asked to run it, correct?

A. Yeah, I was asked to review the metric and implement it on the data.

Q. With respect to the Qualitest Endo 25/50 percent national average, that metric also came -- that metric was presented to you by the attorneys as something that you should run based on documents that you were provided, correct?

A. It was either a metric that we found or the attorneys provided. I honestly can't remember.

Q. And for this metric, which was it? Did you stumble across a document and say, hey, we should run this? Or did the attorneys provide you documents and say based on these documents, we'd like for you to run it as if this were the law of the land?

MS. CONROY: Objection.

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A. I'd really have to review my notes to know for sure. I don't remember.

Q. Okay. And you don't recall seeing this metric in any directive from DEA or any guidance from DEA? That's not your opinion in this case?

A. That's correct. I don't recall seeing it in any guidance, nor is it my opinion to offer.

Q. And I think, to short-circuit this, if we look at page 19, 20, 21, and 22 of your report, those list other metrics that you were asked to run, correct?

A. Yes. I would say I was asked to review the documents, interpret the metrics and run them on the data.

Q. You will not offer any opinion in this case as to whether these metrics are appropriate for a registrant to do in real life, whether a registrant should have done them or had any requirement to do them in real life? That is outside of the scope of the opinions you intend to offer in this case, correct?